

Appl. No. 10/622,256  
Amdt. Dated August 26, 2005  
Reply to Office Action of April 20, 2005

## REMARKS

The Office Action of April 20, 2005, is acknowledged. Claims 13-15 and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Number 5,762,097 to Hettinger et al. Claims 1-12 and 22-33 are allowed, and claims 16-19 and 21 stand objected to as being dependent upon a rejected base claim.

Applicant respectfully traverses the rejection of claim 13 as being anticipated by Hettinger et al. Claim 13 includes the limitation that the toggle valve assembly has an armature and first and second poppets connected to and extending from the armature with the first poppet being longer than the second poppet. The Examiner has alleged that Hettinger et al. shows poppets of different lengths in Figure 3b. The Examiner has identified reference number 68 as the poppets. Applicant notes that reference number 68 is identified in the specification of Hettinger et al. as knobs which guide the return springs (column 6, lines 15-17 and Figures 3c and 5). Applicant assumes the Examiner is referring to valve-closing members 26 and 28 (column 5, lines 1-3 and Figure 5), which are not labeled in Figure 3b.

A rejection under 35 U.S.C. § 102(b) requires that, “the invention was patented or described in a printed publication...” The Hettinger et al. reference does not patent or describe poppets of different lengths. Furthermore, to anticipate a claim, the reference must teach every element of the claim. M.P.E.P. § 2131. Applicant disagrees that Hettinger et al. teaches poppets of different lengths. Closing members 26 and 28 in Figure 3b appear extremely close in size and shape and there is no teaching or discussion in the specification that one may be wider or higher than the other.<sup>1</sup> Any minute differences in the size and shape of the closing members 26 and 28 in Figure 3b of Hettinger et al. are not clear enough to convey to one of ordinary skill in the art that one poppet is longer than the other and no description of such is found anywhere in the

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<sup>1</sup> The Examiner does not clarify whether he is asserting that the different lengths are the height or width of the poppet/closure members in Hettinger et al.

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specification. As such, the disclosure in Hettinger et al. does not rise to the level of anticipation as a reference must be sufficiently clear so as to prove the existence of each and every element in the reference. *Motorola, Inc. v. Interdigital Technology Corp.*, 121 F.3d 1461, 1473 (Fed. Cir. 1997). Also, to constitute anticipation, a prior art reference must describe the claimed invention in sufficient detail to place it in the possession of a person of ordinary skill in the field of the invention. *Sandisk Corp. v. Lexar Media, Inc.*, 91 F. Supp.2d 1327, 1336 (N.D. Calif. 2000) and *Scripps Clinic & Research Foundation v. Genentec Inc.*, 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

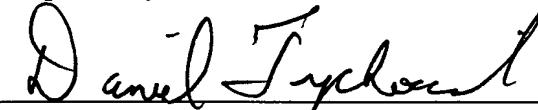
Furthermore, it is well recognized that patent drawings need not be drawn to scale. *Ex parte Horton*, 226 USPQ 697, 699-700 (Bd. Pat. App. & Int'l 1985). Also, the drawings only need to convey what is necessary for the understanding of the subject matter to be patented. M.P.E.P. § 608.02; and *Cooper Cameron Corp. v. Kvaerner Oilfield Products, Inc.*, 291 F.3d 1317, 1322, 62 USPQ2d 1846 (Fed. Cir. 2002). As no differences in length are discussed or claimed by Hettinger et al., any minute differences in the closing members 26, 28 in the figures may only be incidental since the drawings are not necessarily to scale and do not convey to those skilled in the art that the poppets are to be of different lengths. Accordingly, claim 13 is not anticipated by Hettinger et al. as any differences in the closing members in Figure 3b are not described in the specification and are not sufficiently clear or in sufficient detail to place the invention of poppets of different lengths in the possession of a person of ordinary skill in the field.

Applicant notes that new dependent claims 34-36 that depend from independent claim 13 have been included in the enclosed Amendment and contain additional features not found in Hettinger et al.

If necessary to effect a timely response, please consider this paper a request for an extension of time, and charge any shortages in fees, or apply any overpayment credits, to Baker & Daniels LLP's Deposit Account No. 02-0387 (75588.33). However, please do not include the payment of issue fees.

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